

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

IN RE:

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Chapter 11

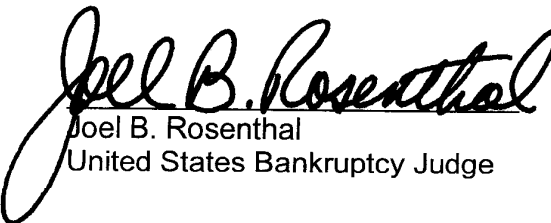
NATALE J. SERGI, Individually, and d/b/a/)
SERBOCO TRUST, and d/b/a/ SERGI
DEVELOPMENT COMPANY)

Case No. 95-43671-JBR

**ORDER ON MOTION OF MICHAEL C. COULOMBE D/B/A/ UNITED ROOFING &
HOME IMPROVEMENTS FOR SUMMARY JUDGMENT ON HIS REQUEST FOR
PAYMENT OF ADMINISTRATIVE EXPENSE**

Fed. R. Civ. P. 56(c), made applicable by Fed. R. Bankr. P. 7056, provides that summary judgment is appropriate when "there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Although the Movant may be correct in his assertion that the Debtor bases his allegation of the date on which the Movant actually began work on the roof of the Debtor's property upon inferences based upon the Debtor's observations and not the Debtor's direct observations of the Movant working on the roof on a particular date, a contention that the Debtor's counsel disputed at oral argument, the Court cannot conclude, on the record currently before the Court, that the inferences are unfounded. That the Debtor may rely upon circumstantial evidence does not convert a disputed fact into an undisputed one. Because there are disputed issues of material fact, including the date on which the Movant began work on the roof of the Debtor's building, the Motion for Summary Judgment is DENIED.

Dated: May 5, 2005


Joel B. Rosenthal
United States Bankruptcy Judge